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**USTR Announces Results of October 2001
“Special 301 Out-Of-Cycle” Reviews on Intellectual Property Protection**

WASHINGTON - United States Trade Representative Robert B. Zoellick today announced the outcome of "out-of-cycle" reviews for the adequacy and effectiveness of intellectual property protection in Malaysia, Costa Rica, and Lithuania. These "Special 301" reviews also determine whether countries deny fair and equitable market access to Americans relying on intellectual property protection.

"Out-of-cycle" reviews are conducted when countries require further monitoring, in addition to the annual review cycle. Under Special 301, placement on the Watch List (WL) or Priority Watch List (PWL) indicates that a country does not provide an adequate level of protection or enforcement of intellectual property rights or market access for persons relying on intellectual property. Countries placed on the Priority Watch List are the focus of increased bilateral attention concerning the problem area or practice. Countries pursuing the most onerous or egregious policies that have the greatest adverse impact on U.S. rights or products are designated as Priority Foreign Countries (PFC). PFC's are subject to accelerated investigations and possible sanctions.

"These decisions reflect the Administration's continued commitment to aggressive enforcement of intellectual property rights," stated Zoellick. "Pirating U.S. intellectual property is theft. It cheats Americans and hurts those countries that need strong IP protection to promote investment, innovation, and technology in the marketplace."

Zoellick noted: "We are gratified that some countries have made progress and are showing a commitment to sustained enforcement. For example, in the last year pirated products are harder to find in Malaysia, and the thieves are moving out. Strong legislation regarding optical disks has been passed and is being implemented largely on schedule. The Malaysian Government campaign to stamp out piracy has been steady, and they have given us no reason to believe that the progress will not continue."

Losses arising from piracy of optical disc products (CDs, DVDs, etc) and other copyrighted materials in these three markets alone amounted to over \$185 million in the last year, according to industry estimates. Implementation of the WTO Agreement on Trade-Related Aspects of

Intellectual Property Rights (TRIPS Agreement) has improved intellectual property protection standards and enforcement.

Malaysia is moved from the Priority Watch List to the Watch List.

In the 2001 Review, Malaysia was retained on the Priority Watch List. At that time, USTR announced its intention to conduct an "out-of-cycle" review in the fall to further assess Malaysia's enforcement efforts, particularly its promise to implement the Optical Disc Act by September 15, 2001.

Since then, Malaysia has been making progress and has shown a commitment to sustained IPR enforcement.

The U.S. Government looks forward to the Government of Malaysia moving forward with piracy prosecutions (especially prosecutions related to unauthorized optical disc production) and convictions which result in deterrent-level penalties. In addition, the U.S. Government urges Malaysia to grant no further licenses for optical disc production of any kind, and now that the September 15 deadline for implementation of the law has passed, we anticipate that all licensed factories will adhere to the terms of the optical disc law. Finally, we urge the Government of Malaysia to identify, raid, shut down, and prosecute the operators of optical disc factories operating without licences.

The United States will continue to closely monitor Malaysia's progress in enforcing the Optical Disc Law and IP laws in general.

Costa Rica remains on the Priority Watch List.

Despite taking positive steps in 2000, including passing TRIPS-compliant legislation, Costa Rica was placed on the Priority Watch List during the 2001 Special 301 annual review due to a lack of effective enforcement activity by the Government of Costa Rica. This lack of effective enforcement has been exacerbated by a law passed last year that is weak on criminal procedures and penalties for intellectual property crimes. The law, among other things, provides lesser penalties for intellectual property crimes than for non-IP crimes, and decriminalizes infringement deemed of "insignificant character" or that is committed "without intention of profit."

The U.S. Government believes that some Costa Rican agencies are starting to demonstrate serious efforts to improve IP enforcement, and there has been recent progress in the enforcement of software cases. Legislation has been introduced addressing the legal deficiencies in the criminal code that were noted in the Special 301 report. However, USTR urges Costa Rica to address the four issues mentioned in last April's 2001 report, including the appointment of a dedicated prosecutor for intellectual property cases.

Lithuania remains on the Watch List.

The U.S. Government is encouraged by the steps Lithuania has taken over the past year to strengthen its intellectual property legislation, including granting judiciary and customs officials *ex parte* search and seizure authority. In addition, resources for IP enforcement have been increased, most notably in the Customs Department. Moreover, USTR understands that Lithuanian courts have recently achieved convictions in software piracy cases and that the sentences in these cases included jail time, damage awards, and the confiscation of business assets. Despite those positive steps, however, Lithuania remains a market and transshipment point for pirated software, videos, and music. The U.S. Government is also concerned about the lack of protection that the Ministry of Health provides to confidential clinical test data submitted with applications for drug-marketing approval.

Other countries

With respect to other countries, USTR has serious concerns about Poland's passage of a new pharmaceutical law that delays all forms of protection for confidential test data in connection with marketing approval application for pharmaceutical products until Poland enters the European Union, as well as the continuing high levels of pirate materials that can be found for sale in the Warsaw Stadium.

USTR will be conducting an "out-of-cycle" review of Slovenia in December. As in Poland, the U.S. Government is concerned about Slovenia's failure to afford adequate protection to confidential test data submitted in connection with applications for pharmaceutical products seeking marketing approval. In the last review, Slovenia was not on any of the Special 301 lists due to commitments made by the Slovenian Government to ensure that such protection would be provided. However, to date, such legislation has not been enacted.

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